

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M No.31464 of 2012**  
Date of decision: 5<sup>th</sup> May, 2016

Satish Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present: Mr. Vishal Gupta, Advocate  
for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana  
for respondent No.1.

Mr. Munish Mittal, Advocate  
for respondents No.2 to 6.

**FATEH DEEP SINGH, J.**

Petitioner Satish Kumar happens to be the son and thus legal heir of Krishna Devi complainant in a criminal case got registered by her by way of FIR No.21 dated 18.01.2006 under Sections 323/325/34 IPC pertaining to Police Station Sadar Yamuna Nagar. The matter was tried by the Court of learned Judicial Magistrate 1<sup>st</sup> Class, Yamuna Nagar at Jagadhri and vide judgment dated 23.10.2009, learned Magistrate acquitted the accused Jagdish Chander, Parmeshwari Devi, Balvinder Singh, Dharamvir Kaur and Arun Kumar, present respondents No.2 to 6. The complainant had preferred an appeal before the first

appellate Court and the Court of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri through impugned orders dated 25.01.2012 (Annexure P3) dismissed the appeal on account of non prosecution. The same is subject matter of challenge by way of instant invocation under Section 482 Cr.P.C.

Upon hearing Mr. Vishal Gupta, Advocate on behalf of the petitioner; Mr. Munish Sharma, Assistant Advocate General, Haryana for respondent No.1/State and Mr. Munish Mittal, Advocate representing respondents No.2 to 6 and on perusal of the records.

As is elicited and is there irrefutably in the records of the learned first appellate Court orders dated 23.08.2011 on the oral information the Court has passed orders that the appellant Krishna Devi is stated to have died and her counsel wants to file an application for impleading her LRs and thereafter the matter was listed for the same on 12.10.2011; 21.11.2011 and 10.12.2011 when ultimately on 25.01.2012 the learned first appellate Court holding that no one has come forward to pursue the present appeal has dismissed the same for non prosecution.

The contentions of learned counsel for the petitioner that an appeal ought to be disposed off on merits and cannot be dismissed for non-prosecution could not be controverted on behalf of the respondents. Though at the same time, by virtue of Section 378(1)(a) Cr.P.C. an appeal to the Court of Sessions from an order of acquittal passed by

Magistrate can only be filed in respect of cognizable and non-bailable offences. No doubt, offences under Sections 325 and 323 IPC are cognizable offences but at the same time are bailable one by virtue of classification of offences given in the first Schedule of the Criminal Procedure Code. Thus, without feeling the necessity to go into that aspect of the matter as it is at this juncture the order of dismissal of the appeal for non-prosecution has been the only contentious issue. It is well settled position of law that once an appeal is filed, the Court is supposed to adjudicate the same on merits and the provisions of Section 384 Cr.P.C. makes it emphatically clear that no appeal shall be dismissed except after giving the appellant a reasonable opportunity of being heard and after perusal of the records. Though it empowers the appellate Court to dismiss a summary appeal but necessitates that the appellant or his counsel needs to be heard before passing any such order in that context.

A perusal of records, as has been highlighted in the arguments of the two sides, shows that the learned appellate Court has neither thought it fit to call for the report of the concerned Police Station as to the death of the complainant Krishna Devi nor has called for any death certificate or records which could substantiate it so. Thus, it is only on the oral averments it has come to this conclusion which certainly is highly uncalled for. The appellate Court merely on the assumption that the counsel has failed to prefer application for

impleadment of LR's, has dismissed the appeal for non-prosecution which certainly to the mind of the Court was not an appropriate one. It ought to have passed a speaking judgment what necessitates the appeal to be dismissed if so warranted and by not doing so has certainly caused immense prejudice to the petitioner and runs contrary to the mandate of law.

In the light of the same, the impugned judgment (Annexure P3) passed by the learned Additional Sessions Judge has not only resulted in miscarriage of justice and being illegal and uncalled for needs to be set aside necessitating intervention by this Court in the exercise of its powers under Section 482 Cr.P.C. thereby directing the learned first appellate Court to restore the same and to proceed ahead into the matter as per law after giving notices to the concerned parties. Parties through their respective counsel are directed to appear before the Court concerned on 25.07.2016.

The petition stands allowed to that extent and disposed off accordingly. Records be sent back.

**(FATEH DEEP SINGH)**  
**JUDGE**

**May 5, 2016**  
*rps*

Whether to be referred to the Reporters or not?